

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAVIBANK,

Plaintiff,

v.

M/Y FREQUENSEA, Official Number
1098950, her mast, bowsprit, boat, anchors,
cables, chains, rigging, tackle, apparel,
furniture, and appurtenances, *in rem*, and
MICHAEL R. PRICE, *in personam*;

Defendants.

IN ADMIRALTY

NO. 2:23-cv-00966-JHC

ORDER OF DEFAULT JUDGMENT *IN*
REM AND ORDER OF SALE

This matter comes before the Court on Plaintiff's motion for default judgment. Dkt. # 22. The Court has reviewed the materials submitted in support of the motion, pertinent portions of the record, and the applicable law. No person has appeared to claim Defendant Vessel M/Y FREQUENSEA, Official No. 1098950 (the "Defendant Vessel"), to answer Plaintiff's Complaint, or to assert other claims against the Defendant Vessel.

Being fully advised, the Court rules as follows:

ORDER OF DEFAULT JUDGMENT *IN REM*
AND ORDER OF SALE- Page 1
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1 **A. Jurisdiction & Procedural Requirements.** The Court has subject matter
2 jurisdiction over the case under 28 U.S.C. § 1333(1). Also, the Court has *in rem* jurisdiction
3 over the vessel as it issued a warrant for arrest of the vessel, which was served in this district.
4 Dkt. ## 7, 19; *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 424 F.3d 852, 858 (9th Cir.
5 2005). The complaint meets the requirements of Supplemental Admiralty Rule C(2). Dkt. #
6 1. Further, Plaintiff has satisfied the notice requirements of Rule C and Local Admiralty
7 Rules 125, 130, and 150. Dkt. # 19. More than 14 days have passed since the arrest and
8 publication of notice, *id.*, and no person has filed a verified statement of right asserting any
9 right of possession or ownership in the vessel. *See* Supp. Adm. R. C(6)(a)(i)(A).

10 **B. Application of Factors Under *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986).**

11 1. Plaintiff would suffer prejudice if default judgment were not entered
12 when no other party has responded or claimed a right of interest, Defendant Price failed to
13 make timely payments on the Note secured by the Defendant Vessel, and Plaintiff continues
14 to accrue costs in holding Defendant Vessel in custody. Plaintiff would be prejudiced
15 because it is left without a legal remedy for its claims against the *in rem* defendant absent
16 entry of default judgment.

17 2. Plaintiff has a valid claim against the *in rem* defendant: Plaintiff's
18 verified complaint, accepted as true upon default, establishes Plaintiff's right to the remedies
19 and priorities under 46 U.S.C. § 31325(b)(1) (enforcement of preferred marine mortgage in a
20 civil action *in rem*).

21 3. Plaintiff is seeking a proportional amount of damages caused by
22 Defendant Price.
23

4. There is no genuine issue of material fact.

5. The record contains no indication the vessel's default was due to excusable neglect.

6. Generally, cases "should be decided upon their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. But in this case, the failure to appear or respond "makes a decision on the merits impractical, if not impossible," so the Court is not precluded from granting default judgment. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002); *see also Empl. Painters' Trust v. Dahl Constr. Servs., Inc.*, No. C19-1541-RSM, 2020 WL 3639591 (W.D. Wash. July 6, 2020). Thus, default judgment is an appropriate remedy in this case.

C. Damages. Because the Court does not accept the amount of claimed damages as true in a default judgment motion, it must assess whether Plaintiff's claimed damages are appropriate to award. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). The plaintiff has the burden of proving its requested damages are reasonable and supported by evidence. *Bd. Of Trs. Of the Boilermaker Vacation Tr. v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

D. Order

Given the foregoing, the Court ORDERS that:

1. Plaintiff's motion is GRANTED.

2. Judgment be entered against the Defendant Vessel as prayed for in the Plaintiff's Complaint in the amount of \$268,855.17, plus reasonable attorneys' fees and custodial fees incurred by Plaintiff, prejudgment interest, post judgment interest from the date of entry of this Order, costs of this action (including charges for all fees for keepers and their

1 costs incurred in this action and for all expenses in the sale of the Defendant Vessel) between
2 June 2023 and the final disbursement of the proceeds of the judicial sale of defendant vessel;

3 3. The Defendant Vessel be condemned to answer the judgment of
4 Plaintiff and the Clerk of this Court shall issue a writ *venditioni exponas* to the Marshal of
5 this District for the sale of the Defendant Vessel, the Plaintiff shall publish in the Daily
6 Journal of Commerce, Seattle, Washington a Notice of Sale, in the form attached hereto, for
7 eight (8) consecutive days prior to the day of sale, excluding Saturdays, Sundays and legal
8 holidays in accordance with Local Admiralty Rule 145.

9 4. The sale shall be conducted according to the following terms:

10 (a) The sale will be to the highest bidder who must on the day of sale
11 deposit with the Marshal, in cash or cashier's check issued by a Seattle member bank of the
12 Federal Reserve System, 10% of the bid and pay the balance due, in cash or cashier's check
13 issued by a Seattle member bank of the Federal Reserve System within three (3) days
14 thereafter, excluding Saturdays, Sundays and legal holidays. If an objection to the sale is
15 filed within that time, the bidder is excused from paying the balance of the purchase price
16 until the sale is confirmed, and for a period of three (3) days thereafter excluding Saturdays,
17 Sundays and legal holidays. If no written objection is filed within three (3) days of the date of
18 sale, excluding Saturdays, Sundays and legal holidays, the sale will be confirmed as in due
19 course in accordance with Local Admiralty Rule 145(e). Upon the failure of the successful
20 bidder to pay the balance of the purchase price when due, the entire deposit shall be forfeited
21 and applied toward administrative costs and then in satisfaction of the proven liens,
22 according to their priority.
23

1 (b) The Plaintiffs or any other party who has been awarded judgment
2 against the vessel may bid at the Marshal's sale all or any part of its judgment in lieu of cash
3 and, if the successful bidder, it shall be required to deposit and pay in cash or cashier's check
4 only so much as shall exceed its judgment plus interest (including pre-judgment interest and
5 post-judgment interest), costs (including charges for all fees for keepers and their costs
6 incurred in this action and for all expenses in the sale of the Defendant Vessel), and
7 reasonable attorneys' fees, and a sum sufficient to secure outstanding Marshal's fees and
8 costs and the Marshal's commission. Should any of the parties object to a party bidding all or
9 part of its judgment in lieu of cash, the right to so bid shall be further conditioned upon the
10 posting by the judgment bidder of a corporate surety bond or bonds in form acceptable to the
11 court in the amount of the claim or claims of any objecting party or parties; provided,
12 however, that if any party suffers delay or damage, or incurs expense because of such
13 objection and if the Court determines that the objection is not meritorious or is otherwise in
14 violation of local rules then the Court may tax as costs against the objecting party or parties a
15 sum equal to such damages or expenses, including the cost of the surety bond or bonds.

16 (c) The vessel shall not be sold to any person not a citizen of the United
17 States within the meaning of 46 U.S.C. §961.

18 (d) Prospective bidders, upon application to the U.S. Marshal and prior
19 notice to the attorney for Plaintiff, SAVIBANK, and at such times and in such manner as the
20 U.S. Marshal may direct, may board the vessel for the purpose of inspection, provided that it
21 shall be at the sole expense and risk of such person or his representative.

22 5. The U.S. Marshal shall bring the proceeds of the sale into Court and
23 deposit the same with the Clerk thereof, pending further order of this Court.

1 DATED this 19th day of September, 2023.

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4 JOHN H. CHUN
5 U.S. DISTRICT JUDGE
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